



DEPARTMENT OF PUBLIC ADVOCACY

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July 29, 2010

To: Justices, Kentucky Supreme Court

From: Timothy G. Arnold, Post-Trial Division Director

Re: Comments on Proposed FCRPP 42

The Kentucky Department of Public Advocacy (DPA) submits the following comments to the proposed FCRPP 42:

Kentucky Continues to Struggle with the Problem of Over-Institutionalization of Status Offenders: As the Kentucky Court of Appeals recently cautioned in a published opinion concerning the illegal detention of a status offender, “a family and child in trouble should not be further torn apart by the system that is in place to provide stability and reunification.”¹ Despite numerous legislative provisions in place to discourage the use of secure detention of status offenders pursuant to the Valid Court order (VCO) exception² and to eliminate the illegal use of secure detention of status offenders³, according to one report delivered at during the KBA Conference, Kentucky had the highest rate of detention for status offenders of any state currently accepting money under the Juvenile Justice and Delinquency Prevention Act.

The Department Supports the Adoption of Strong Family Court Rules to help Reduce the Institutionalization of Status Offenders: The Kentucky’s Unified Juvenile Code explicitly states that the purpose of the status offender chapter is to assist families in solving the problem for which they have been referred by addressing their individual needs with all of the Commonwealth’s efforts and available resources.⁴ In short, the legislature has recognized that the behaviors which define status offenses (*i.e.* excessive absenteeism from school; running away from home; or repeated misbehavior at home or school) are merely symptoms of a greater problem. The lack of clear, consistent guidelines for how status offender cases are to be handled contributes to a lack of fair process and sound resolutions with these kids. As noted previously, the recent Court of Appeals

¹ *A.C. v. Commonwealth*, ___ S.W.3d ___, 2010 WL 2218655 (Ky.App. 2010).

² KRS 600.020(61); KRS 610.010(11); KRS 610.265(d); KRS 630.070; KRS 630.080.

³ KRS 610.265; KRS 630.100.

⁴ See KRS 630.010(1) and (2).

decision in *A.C. v. Commonwealth*⁵ is instructive, in that it clearly demonstrates the harm which can befall a child when a trial court lacks the guidance which can be provided by effective court rules. The General Assembly has made it very plain that it will not interfere with the Court of Justice's inherent authority to hold a litigant, even a status offender, in contempt of court.⁶ The Court of Justice's proposed rules begin the process of providing the needed guidance.

The Proposed Forms Will Significantly Improve the Quality of Information Being Provided to the Family Court: "The purpose of juvenile proceedings is to assist the child and the family."⁷ Accordingly, information that would assist the courts in accurately identifying the causes of status offense behaviors will also serve to assist the courts in referring children and families to appropriate services and resources. The Department of Public Advocacy supports the proposed adoption of a number of forms pertaining to Status Offenders. Information required by these forms will provide more insight and understanding into the causes of the behavior of individual status offenders. By requiring this high level of relevant information to be filed with petitions alleging status offense behaviors, Judges and other court personnel will be in a better position to address the individual needs of the child and his or her family. The proposed forms will serve as an invaluable tool for the courts, families and schools who are working together to address these status behaviors.

The Department Proposes that FCRPP 42 be Amended to Provide the Benefit of the Version Proposed by the Status Offender Subcommittee: The DPA suggests the following amendments to the proposed court rules – which are intended to clarify for the lower courts the bounds of their authority to order the secure detention of status offenders. The proposed amendments to the language are noted by the use of italics and underline formatting.

DPA's proposed amendment to FCRPP 42 Proceedings:

1. Pursuant to KRS 610.060, the judge shall explain to the child on the record his or her rights and the charge, and shall utilize AOC-49, Notice of Juvenile Rights and Consequences for Status Offenders.
2. A public advocate shall be appointed for the child unless otherwise waived on the record by obtaining private counsel. The court may place the child on terms which address the child's alleged behavior(s). *The court shall consider ordering participation or investigation into a service, program or local resource available in the*

⁵ *A.C. v. Commonwealth*, ___ S.W.3d ___, 2010 WL 2218655 (Ky.App. 2010).

⁶ See KRS 600.060

⁷ *A.C. v. Commonwealth*, ___ S.W.3d ___, 2010 WL 2218655 (Ky.App. 2010).

community that may assist the child and/or the child's family in remedying the problem, which has resulted in the behavior.

3. A pretrial may be held in the court's discretion.
4. Adjudications shall be held in accordance with the requirements of KRS 610.080.
5. For the disposition, the court shall utilize the AOC-JV-36, Juvenile Status Offender Order, to order terms, services, programs and/or resources to address the needs of the child and family pursuant to KRS 630.120(5). These orders may not require an involuntary drug screen of the parent(s) or other person exercising custodial control or supervision of the status offense case. The court may also adopt recommendations in the dispositional report. For a child who is committed to the state child protective service agency, the court shall also utilize, the AOC-JV-31, Juvenile Status or Delinquency Disposition.
6. Upon a proper motion, the court may consider terminating a valid court order if there have been no violations of that order within the preceding twelve (12) months. And in all cases the valid court order shall expire upon the child's eighteenth birthday.

The proposed amendment, which largely conforms to the working document produced by the Status Offender Subcommittee convened in 2009 for the purpose of submitting proposed uniform rules to this Court for consideration suggested above, serves two purposes. First, the proposed amendment encourages the identification of and referral to appropriate services for the child and family so that they will be provided the assistance envisioned by the Status Offender Chapter of the Juvenile Code. Second, the revision will encourage the family court to limit its reliance on "Valid Court Orders" as response to status offender conduct.

The proposed amendment to FRCPP 42 subsection 2 is intended to encourage judges to do more than simply place children on conditions when they appear in their court for the first time. If a Judge is going to court order a child who is alleged to be beyond control of parent or beyond control of school to obey the rules at home and school, it is reasonable and apparent from the explicit purpose(s) of the status offender chapter of the juvenile code that the same court should consider ordering the parent to take that child for a mental health evaluation to determine whether a mental health professional can help to identify the cause of the beyond control behaviors.

The remaining proposed amendments to FRCPP 42 are intended to curtail the illegal detention of status offenders by clarifying the nature of the proceedings involving status offenders. As noted above, Kentucky detains status offender at one of the highest rates in the nation. And it is also worth noting that since 2008, there have been several Kentucky Court of Appeals opinions (both published and unpublished) which have found error where family court judges handling status offender cases have denied children their basic due process rights.⁸ Accordingly, the proposed amendments to the court rules would serve to reduce future errors in proceedings involving status offenders.

The proposed Status Offender rules will have a significant and beneficial effect on the treatment of juvenile status offenders, particularly if the DPA proposed changes are adopted as well. DPA urges this Court to adopt the proposed rules, and to modify them as proposed above, and in its comment regarding FCRPP 44 (provided separately). If the Court has any questions about the Department's position on this issue, please feel free to contact me by email at tim.arnold@ky.gov, or by phone at (502) 564-8006.

⁸ *A.C. v. Commonwealth*, --- S.W.3d ---, 2010 WL 2218655 (Ky.App. 2010)(published); *K.F. v. Commonwealth*, 274 S.W.3d 457 (Ky. App. 2008)(published); *L.A.S. v. Commonwealth*, 2010 WL 2329102 (Ky. App. 2010) (unpublished); *M.G. v. Commonwealth*, 2008 WL 4683239 (Ky. App. 2008)(unpublished); *D.S. v. Commonwealth*, 2009 WL 2633194 (Ky. App. 2009)(unpublished).